IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.1216 OF 1996.

Jijabai @ Girjabai Parshuram Bhole : Appellant.

versus

The State of Maharashtra : Respondent.

Mr.Haridas i/by P.N.Joshi for the appellant.

Mr.S.N.Gawade, AGP, for the State.

CORAM : D.G.DESHPANDE,J.

DATED : 10th February 2005.

ORAL ORDER :-

1. Heard advocate for the appellant and learned AGP for the State. The land of the claimant at Talegaon Tal. Igatpuri, Dist.Nashik was acquired by the State. The notification under Section 4 was published on 3.1.1981. The Special Land Acquisition Officer awarded the compensation on 22.11.1984. The area of the acquired land was 3 H 24 Ares and .17 Ares

Potkharaba from Gat No.191. The compensation awarded by the SLAO was Rs.12,000/- per hector and he also awarded Rs.200/- per hector for potkharaba. The claimant claimed Rs.75,000/- per hector. The Reference Court awarded Rs.14,000/- per hector as compensation and Rs.2,000/- per hector for potkharaba. Hence, according to the claimant, proper compensation has not been paid. Therefore, claimant has filed this appeal.

2. The impugned order of the lower Court was in Land Reference Nos. 25/86 to 39/86 and 199/88. The present appeal is filed by Jijabai @ Girjabai Parshram Bhole who was the claimant in L.R.No.25/86. It appears from the common order that the lands from about 14 survey numbers from the same village were acquired and, so far as this claimant is concerned, her land admeasuring 3 H. 24 R. 47 PK. from her Survey No.191 was acquired by the State. The Reference Court took into consideration the fact that village Talegaon was within 2 to 5 kms. away from Igatpuri which was a junction of railway and a market place; that Bombay Agra Road passes through village Talegaon and also proceeds towards Igatpuri town; that it was said to be near to Bombay; that

industrial area was being developed by the side of Bombay Agra Road.

3. The claimants in order to substantiate their claims relied upon a judgment in L.R.No.239 of 1983. That was in respect of the lands acquired from the same village Talegaon and the acquisition was for the purpose of establishment of industrial unit. The court awarded compensation at the rate of Rs.40/- per sq.mtr. for better quality of land and Rs.20/- per sq.mtr for inferior quality of land. The judgment was delivered on 19th March 1988. The claimants contended that it should be followed while fixing the compensation. The court, however, came to the conclusion that the lands, which were the subject matter of the Reference in the earlier order dated 19th March 1988, were having large frontage to the old Bombay Agra Road and they were situated within a distance of 200 metres from Igatpuri town. Further these lands were spread between the Central railway line and Bombay Agra Road. And, therefore, the Court concluded that considering the location of the lands that judgment cannot be compared with the lands under acquisition in the present Reference

or in the present appeal. The Court also found that those lands were far away from the lands acquired in the present proceedings. They were lying on the northern side of Igatpuri town, whereas the present lands are situated to the southern side. Therefore, the Court declined to accept the rate given to the lands in order dated 19th March 1988.

4. In this regard, the counsel for the claimant strenuously urged that Talegaon being a small village, there could not be much different or distance between the lands situated on Northern side and the lands situated on the southern side. And, therefore, that could not be the reason, not to rely upon the rates granted in the order dated 19th March 1988.

. However, this argument cannot be accepted. Because the trial Court has given strong and convincing reasoning in that regard. Apart from differences noted above, the trial Court found that the present lands were situated on the southern side of the village and were boarding of hills. Because the SLAO has mentioned this fact that the lands were spread

over between the slopes and hills, the soil was barad and murum growing mostly paddy, Nagali, udit etc. which means that the land was of totally inferior quality; the water supply was only through rain water. The witness for the claimants also admitted that the lands covered by order dated 19th March 1988 were acquired for industrial purpose. They were on higher level. This reasoning of the Court is solid, strong and convincing. There is no similarity between the land acquired in the present case and the lands which was the subject matter of the order dated 19th March 1988. The court has also taken into consideration the grouping of the lands in six different groups as per their quality. This grouping was done on the basis of land revenue. The sales deed in respect of Gat Nos.199 and 151 ought to have been considered by the SLAO because both the lands were in the vicinity of the land acquired and they would show proper value. Therefore, the Court came to the conclusion that the SLAO should have awarded Rs.14,000/- per hectare for group No. I and Rs.20,000/- per hectare for group No.II. The land of the present claimant is in Group No.I. Because in para 19 of the judgment, the Court has recorded the finding

that the lands falling in group No.I are S.No.191 and other numbers. S.No.191 is the Survey No. owned by the present appellant. And, therefore, the Court awarded Rs.14,000/- for Group No.I.

5. A perusal of evidence of witness No.1 Bhaurao Laxman Sadgir, who appears to have been examined on behalf of the claimants, shows that this witness has mainly relied upon the acquisition of land for industrial purpose, for which he has relied upon the judgment dated 19th March 1988. According to him, supply of water was being made to industrial area; there were big industries coming up near their village; the industries of manufacturing of Jeep vehicle is set up and; now the agricultural lands of village Talegaon were converted for non agricultural purpose. Therefore, they should be given at the rate of Rs.100/- per sq.mtr. In the cross examination the witnesses admitted that distance between Igatpuri and Talegaon is 2 furlongs and not 5 kms.; the tank is constructed at distance of 400 ft. to the southern side of Talegaon village and he admitted that the lands were on hills but they were of superior quality. He also admitted that cultivation was on the rain

water only. The witness could not tell what was the market rate of the land during the relevant time.

6. It appears that two more witnesses have been examined on behalf of the claimants. They were witness No.2 Shamrao Balwant Kedar and witness No.3 Murlidhar Yeshwant Sadgir. Shamrao Kedar has stated that he had agreed to purchase S.No.479 of village Talegaon to the extent of 2 acres for consideration of Rs.61,000/- on 5.2.1981. He has produced xerox copy of the agreement at Exhibit 19 and stated that the sale deed was registered in the year 1991. In Cross examination he admitted that the land was in his possession for ten years and at the time of Isar Rs.5000/- were given and, at the time of agreement of sale Rs.30,000/- were given, but he did not get the sale deed executed because he was searching for other purchaser. This sale instance has been disbelieved by the Court because the agreement which was registered was not for after payment of full consideration and, because this witness was the businessman who was looking for plots having N.A. potentiality so that he could sell them subsequently. I do not

find that the reasoning given by the trial Court for rejecting this sale instance is improper.

7. Murlidhar Sadgir is the next witness (PW 3). He examined on behalf of some other claimant in some other Reference as the evidence was common in all the References. He did not prove or produce any sale instance, but only made his claimed at the rate of Rs.100/- per sq.mtr. There is nothing in his evidence to support the contention of the claimant.

8. It will be clear, therefore, that when the claimants are making their claim at the rate of Rs.100/- per sq.mtr. they have nothing in their possession to prove that the market price of the lands at the time of notification under Section 4 was Rs.100/- per sq.mtr. The sale instance did not support them, neither the earlier order of court dated 19th March 1988 support them for the reasons stated above. It will be clear that there was no other material for the Court to come to conclusion in favour of the claimant and no reasons to award more than what the court ultimately gave. This appeal is for further enhancement and I do not find any

reason to enhance the compensation any more. Therefore, the appeal is dismissed. No order as to costs.

[D.G.DESHPANDE]

10/02/2005 JUDGE.